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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/071,634	02/07/2002	Jerry Shifman	94-25b	2618
30699      7590      11/26/2003				
DAYCO PRODUCTS, LLC 1 PRESTIGE PLACE MIAMISBURG, OH 45342				
EXAMINER AFTERGUT, JEFF H				
ART UNIT 1733		PAPER NUMBER		

DATE MAILED: 11/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Advisory Action

Application No.

10/071,634

Applicant(s)

SHIFMAN ET AL.

Examiner

Jeff H. Aftergut

Art Unit

1733

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 06 November 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

## PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
**ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).**

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.  
2. ☐ The proposed amendment(s) will not be entered because:  
(a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ they raise the issue of new matter (see Note below);  
(c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.  
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.  
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:


Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: 32-35 and 37-51.

Claim(s) withdrawn from consideration: \_\_\_\_\_

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.  
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.  
10. ☒ Other: See Continuation Sheet

  
Jeff H. Aftergut  
Primary Examiner  
Art Unit: 1733

Continuation of 5, does NOT place the application in condition for allowance because: as presented, the claims are not commensurate in scope with the applicant's arguments in relation to the use of the hose and the unexpected benefits attained as a fuel hose. The applicant is advised additionally that there is no comparison between the closest prior art to Feit and the claimed invention and as such there is no convincing showing of unexpected results. Applicant is additionally advised that those skilled in the art at the time the invention was made would have been led to incorporate a fluoroelastomeric material within the fluorothermoplastic (a blend of the two) in the manufacture of a hose as the incorporation of an elastomeric material would have made the hose less brittle (Johnson) and the incorporation of the blend of thermoplastic and elastomer materials was known per se as desirable in hose construction as evidenced by E.P. '911, Coran et al or Novak et al. The references to Dyneon and Viton were merely cited to show that the thermoplastic of Feit was in fact a fluorothermoplastic material and that the elastomer of Johnson was in fact the same fluoroelastomer claimed. The applicant is advised that the reference to Johnson is NOT the only reference in the rejection and that the basis for the rejection was whether one skilled in the art would have incorporated the fluoroelastomer of Johnson with the fluorothermoplastic of Feit in order to render the same less brittle (more flexible). Such clearly would have been desirable for a hose as the references to Coran, Novak and E.P. '911 suggested. One would have reasonably expected for this to work additionally. It should be noted that Johnson did not exclude mixing the elastomer with the thermoplastic fluoropolymer of Feit.

Continuation of 10, Other: Note that claim 37 as presented depends upon claim 36 (which was cancelled). Also note that claim 39 depends from claim 37. Correction of the dependency of claim 37 is recommended. Additionally, note that the amendment is not being entered because applicant has used the incorrect identifiers for the claims. For those claims which are cancelled, applicant should merely use the identifier "Canceled" not "Previously Canceled" as presented in the proposed amendment. Additionally those claims with the identifier of "previously amended" should read "previously presented". Lastly, those claims which use the identifier "previously added" should be changed to "previously presented". Applicant is referred to the MPEP for the identification of the proper identifiers. Applicant is advised that upon submission of the amendment with the correct and proper identifiers, the proposed amendment after final will be considered proper and will be entered.